

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KENYATTA LAJUAN DANIELS,

Defendant-Appellant.

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UNPUBLISHED  
February 22, 2007

No. 265367  
Wayne Circuit Court  
LC No. 05-004009-01

Before: Murphy, P.J., and Smolenski and Kelly, JJ.

SMOLENSKI, J. (*concurring in part and dissenting in part*).

I concur with the majority's decision to affirm defendant's conviction for operating a vehicle while intoxicated, MCL 257.625(1). However, because I conclude that there was sufficient evidence from which a reasonable jury could conclude beyond a reasonable doubt that defendant had constructive possession of the firearm found in the center console of the car he drove, see *People v Burgenmeyer*, 461 Mich 431, 438; 606 NW2d 645 (2000), I would not reverse defendant's convictions for felon in possession of a firearm, MCL 750.224f, and possessing or carrying a firearm during the commission of a felony, MCL 750.227b. Therefore, I must respectfully dissent from the majority's decision to reverse those convictions.

/s/ Michael R. Smolenski